



January 26, 2007

Mr. Glenn Stober, Director  
California Business, Transportation, and Housing Agency  
980 Ninth Street, Suite 2450  
Sacramento, CA 95814

Dear Mr. Stober:

**Final Report: Agreed Upon Procedures-Nor-Cal Financial Development Corporation**

The Department of Finance, Office of State Audits and Evaluations, has completed its agreed-upon procedures review of the Nor-Cal Financial Development Corporation (Nor-Cal FDC) in relation to the Small Business Loan Guarantee Program and the San Francisco/Oakland Bay Bridge Guarantee Program for the period July 1, 2004 through June 30, 2005.

Enclosed is the final report. Included in the report is additional information Nor-Cal FDC sent as its response to our October 27, 2006 draft report and our evaluation of the documentation provided.

In accordance with Finance's policy of increased transparency, the final report will be placed on the Finance website. We appreciate the assistance and cooperation of Nor-Cal FDC staff during the review. If you have any questions regarding this report, please contact Frances Parmelee, Manager, or Rich Hebert, Supervisor, at (916) 322-2985.

Sincerely,

*Original signed by:*

Diana L. Ducay, Chief  
Office of State Audits and Evaluations

Enclosure

cc: Ms. Karen Kawada, Program Analyst, California Business, Transportation, and Housing Agency  
Mr. Arnold Bellow, President, Nor-Cal Financial Development Corporation

# AGREED-UPON PROCEDURES

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## Nor-Cal Financial Development Corporation Small Business Loan Guarantee Program And San Francisco/Oakland Bay Bridge Guarantee Program For the Period July 1, 2004 through June 30, 2005

Prepared By:  
Office of State Audits and Evaluations  
Department of Finance

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## INDEPENDENT ACCOUNTANT'S REPORT ON APPLYING AGREED-UPON PROCEDURES

Mr. Glenn Stober, Director  
California Business, Transportation, and Housing Agency  
980 Ninth Street, Suite 2450  
Sacramento, CA 95814

The Department of Finance, Office of State Audits and Evaluations (Finance), performed the procedures enumerated below, which were agreed to by the California Business, Transportation, and Housing Agency (BT&H) to assist in evaluating Nor-Cal Financial Development Corporation's (Nor-Cal FDC) compliance with the Small Business Loan Guarantee Program (SBLGP) and the San Francisco/Oakland Bay Bridge Guarantee Program (Bay Bridge) requirements. Nor-Cal FDC management is responsible for compliance with these requirements. This review covers the period July 1, 2004 through June 30, 2005.

This agreed-upon procedures engagement was conducted in accordance with the *Statements on Standards for Attestation Engagements* published by the American Institute of Certified Public Accountants and with certain requirements applicable to the SBLGP and Bay Bridge Program. The sufficiency of these procedures is solely the responsibility of the BT&H. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

### Background

The SBLGP was created by the Legislature to encourage a lender to lend to small businesses and farming enterprises that need additional collateralization in the form of a guarantee. The purpose of loan guarantees is to encourage the development of small business opportunities for minority, women, and disabled persons and to alleviate unemployment. The Legislature also created the SBLGP to allow participation in state public works contracts by small and emerging contractors. The Bay Bridge Program is also a state-funded loan and bond guarantee program, but specifically designed to encourage minority participation in the construction of the new San Francisco/Oakland Bay Bridge project. Originally set up under the California Technology, Trade, and Commerce Agency (CTTCA) and administered by the Office of Small Business Loan Guarantee Program, these programs are now with the BT&H.

To implement these programs, CTTCA created a Loan Guarantee Trust Fund (Fund) to back the guarantees on loans to small businesses made by local lending institutions. There are 11 regional financial development corporations, each with its own set of trust accounts. Under a contractual agreement with the CTTCA, program administration and direction of certain Fund account transactions had been assigned to the regional financial development corporations. Each corporation issues guarantees on behalf of the state and manages its share of the Fund and portfolio of outstanding guarantees.

## Procedures Performed and Findings

### 1. Verification of Allowable Costs and Cost Allocation

- a. Total operational and administrative costs reported on monthly claims for reimbursement were traced to supporting documentation to determine whether claims included unallowable costs under the contracts. These costs consisted of personnel costs, fringe benefits, rent costs, and sub-contractors/consultants.

For the sample selected, timesheets were reviewed for each of the authorized positions to determine whether personnel costs were allowable and that the claims reflected actual expenses incurred for the contract periods. The total salaries claimed for the year were also tested to determine whether the proportion of fringe benefits claimed for the year was in agreement with the contract percentages. In addition, amounts claimed and paid for rent for the period of January 2005 through May 2005 were tested to determine whether costs were allowable. The nature of costs claimed and paid for sub-contractors/consultants was also examined to determine whether such costs were allowable under the two contracts.

As a result of performing the procedures, the following was noted:

- Some personnel costs were not documented or supported with timesheets. Specifically, there were no timesheets for the President for two semi-monthly periods. In addition, the number of hours and hourly pay documented on the timesheets for the months of January, March, and April 2005 for a program staff do not support the amounts claimed and reimbursed. As a result, questioned costs amount to \$8,170.
- Nor-Cal FDC was unable to provide us with documentation, such as a rent or lease agreement or canceled checks, to substantiate amounts claimed for rent. Accordingly, we question \$10,955 in claimed rent amounts.

See Finding 1 in the *Findings and Recommendations* section of this report for further details regarding questioned costs for personnel and rent.

With respect to the testing of sub-contractors/consultants, a review was conducted to determine whether such costs were allowable under the two contracts. From the general ledger, payments were traced to approved contracts, participation agreements, invoices, and canceled checks for the months of August 2004 through February 2005. For the sample selected, the costs for the first and last month of the contract periods were also reviewed to ensure that costs were incurred within the contract periods.

During our testing, we determined that Nor-Cal FDC subcontracted with Venture Cal LLC, a for-profit corporation, for the Bay Bridge Program. This agreement between Nor-Cal FDC and Venture Cal LLC was not pre-approved by BT&H as required by the contract. During our review, the following issues were noted:

- The Chairman of Nor-Cal FDC's Board of Directors is a Principal Officer and Founder of Venture Cal LLC.
- Nor-Cal FDC's President is the Managing Director, a Principal Officer, and Founder of Venture Cal LLC.
- Nor-Cal FDC's Vice-President, who is also Nor-Cal FDC's underwriter and surety bond specialist, performed outside consulting work for Venture Cal LLC under Nor-Cal FDC's Bay Bridge Program contract.

Our review of the Statements of Economic Interests Form 700 determined that the Nor-Cal FDC's Chairman did not disclose his interest in Venture Cal LLC. Although both the Nor-Cal FDC's President and Vice-President disclosed their financial interest in Venture Cal LLC, neither of them disclosed their material business relationship with Venture Cal LLC regarding the Bay Bridge Program. Specifically, Venture Cal LLC operated under a no-bid contract with Nor-Cal LLC for consulting costs and other expenses pertaining to the Bay Bridge program.

It appears that there was inadequate disclosure of economic interest by the officers of Nor-Cal FDC, and Nor-Cal FDC's agreement with Venture Cal LLC was not pre-approved by BT&H. See Finding 2 in the *Findings and Recommendations* section of this report for further details.

- b. As stated above, personnel costs were not documented or supported with timesheets. See Finding 1 in the *Findings and Recommendations* section of this report for further details.
- c. The Nor-Cal FDC's cost allocation plan was obtained in order to determine the methodology and reasonableness of the allocation. Timesheets for selected personnel, invoices, and the general ledger were obtained and reviewed.

Based on the testing of timesheets for the period January through March 2005, the underwriter/surety bond specialist, allocated only 44 percent of his total time to the Bay Bridge Program even though 60 percent of his total monthly salary was charged to the Bay Bridge Program.

With respect to rent costs, it appeared that for January 2005, \$2,806 out of a total of \$3,025 in rent was charged to the SBLGP and Bay Bridge Program, even though the Nor-Cal FDC received revenue from other programs, such as the Port of Oakland and the California Economic Development Lending Institute. For March 2005, the rent costs charged to the two programs were reduced to \$2,381, and further reduced to \$1,431 in May 2005.

It appears that costs were allocated based on availability of program funds rather than a reasonable methodology. See Finding 3 in the *Findings and Recommendations* section of this report for further details.

## 2. Record Maintenance

To verify that all records are maintained, staff members were interviewed, and the records, general ledger, and loan guarantee program database were inspected. Other documents were also reviewed, such as participating agreements, to determine whether the Nor-Cal

FDC's records were kept separate from other activities unrelated to the SBLGP and the Bay Bridge Program.

The Nor-Cal FDC maintains all records required by the contracts.

### **3. Collection Costs**

Our objectives were to: (1) determine whether the Nor-Cal FDC correctly charged collection costs, and (2) if collection costs were charged, determine whether the Nor-Cal FDC paid the out-of-pocket costs for each collection effort with the monies received by that single successful collection. A review of invoices was performed and the records, general ledger, and loan guarantee program database were inspected.

The Nor-Cal FDC did not charge collection costs or pay out-of-pocket costs for collection efforts.

### **4. Timely Deposit of Recovery Funds**

To determine the length of time between the receipt of recoveries and when the funds are forwarded to the state or Trustee for deposit, staff were interviewed and the following items were reviewed:

- a. Loan guarantee program database.
- b. List of guarantee claims paid for defaulted loans from July 1, 2004 through June 30, 2005.
- c. General ledger.

Our review identified five defaulted loans for the period that were initiated and recovered by the lenders. As a result, Nor-Cal FDC did not receive any recovery funds that needed to be forwarded to the state for deposit.

### **5. Accuracy and Reconciliation of Loan Guarantee Portfolio Records**

Staff members were interviewed and the loan guarantee program database was reviewed to determine whether loan guarantee portfolio records were accurate and reconciled with bank records. Specifically, the loan guarantee program database was reviewed to verify whether it was updated when an extension is granted to a matured line of credit.

Even though reconciliations were not performed, staff communicated regularly with lenders and received updates. In addition, the database was updated whenever an extension was granted to a matured line of credit.

### **6. Monitoring of Collateral Holdings**

To verify whether the Nor-Cal FDC has a system in place to monitor the continued existence of collateral holdings, staff were interviewed, and examinations of the loan guarantee program database and the list of guarantee claims paid were performed. The State of California Loan Guarantee Program Policy and Procedures Manual recommends that each FDC visit every applicant's place of business.

The Nor-Cal FDC does not perform visits, but staff regularly communicate with lenders and receive updates on loan status.

## **7. Accounting Procedures to Prevent Double Billing**

Staff members were interviewed and the accounting process was reviewed with the Nor-Cal FDC's accountant. The general ledger and cost allocation plan were also reviewed to determine the separation of accounting records and process to prevent double billing.

Based on our review, the accounting procedures in place appeared adequate to prevent double billings.

## **8. Strengths and/or Weaknesses in Accounting Procedures**

The single audit reports prepared by the Nor-Cal FDC's certified public accountant for the fiscal periods ending June 30, 2004 and June 30, 2005 were reviewed to identify the strengths and/or weaknesses in accounting procedures.

The audit reports did not identify any significant strengths or weaknesses.

## **9. Incorporation of Separation of Duties in Accounting Procedures**

In order to determine if separation of duties was incorporated in the accounting procedures, the functional organization chart was obtained and reviewed, and staff members were interviewed regarding accounting processes and procedures.

It was noted that there were no accounting procedures manual. However, Nor-Cal FDC uses QuickBooks Pro 2004 to manage its programs.

We were not engaged to and did not conduct an examination, the objective of which would be the expression of an opinion on compliance with SBLGP and Bay Bridge Program requirements. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of BT&H, and is not intended to be and should not be used by anyone other than the specified parties. However, this report is a matter of public record and its distribution is not limited.

*Original signed by:*

Diana L. Ducay, Chief  
Office of State Audits and Evaluations  
(916) 322-2985

February 9, 2006



## FINDINGS AND RECOMMENDATIONS

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### FINDING 1

#### Questioned Claimed Costs

Condition:

Some claimed costs did not have adequate documentation, such as timesheets, cancelled checks, or rental agreements. Specifically, the following costs were not supported or calculated correctly:

- Claimed salary costs of the President were not supported by timesheets. Timesheets were not provided for the semi-monthly periods ending January 13, 2005 and February 15, 2005. As a result, the claimed salary costs totaling \$6,096 are questioned. In addition, a support specialist was paid at the rate of \$27 per hour for 39 hours from January through April 2005. Nor-Cal FDC billed BT&H \$3,127 instead of the actual costs of \$1,053 (\$27 X 39 hours), resulting in questioned costs of \$2,074. In all, questioned salary costs totaled \$8,170 for both programs.
- From January 2005 through May 2005, Nor-Cal FDC charged \$781 per month in rent to the SBLGP, for a total of \$3,905. In addition, Nor-Cal FDC also charged rent in the amount of \$1,600 per month (January 2005 through April 2005), and \$650 in May 2005 to the Bay Bridge Program, for a total of \$7,050. Total rent charged to both programs was \$10,955; however, Nor-Cal FDC was unable to provide supporting documents, such as rental or lease agreements or canceled checks, to substantiate any of these claimed rent costs. Total questioned costs for rent are \$10,955.

Criteria:

San Francisco/Oakland Bay Bridge Contract, Exhibit B, Section 3, states that the state agrees to compensate the Nor-Cal FDC for actual expenditures incurred in accordance with the budget line item amounts. Payment for such expenditures by BT&H is contingent upon submission of invoices for claimed expenditures by Nor-Cal FDC that reflects actual expenditures.

Recommendation:

Remit \$19,125 in questioned costs to BT&H due to inadequate supporting documentation for claimed costs. Final determination and resolution of the questioned costs is to be made by BT&H.

### FINDING 2

#### Improper Contracting Practices

Condition:

For the Bay Bridge program, Nor-Cal FDC awarded a contract to Venture Cal LLC, a for-profit corporation; however, this contract was not pre-approved by BT&H. In addition, the following were noted:

- The Chairman of Nor-Cal FDC's Board of Directors is a Principal Officer and Founder of Venture Cal LLC.
- The Nor-Cal FDC's President is the Managing Director, a Principal Officer, and Founder of Venture Cal LLC.
- The Nor-Cal FDC's Vice-President is also its underwriter and surety bond specialist. The Vice-President also performed outside consulting work under Venture Cal LLC's Bay Bridge contract with Nor-Cal FDC.

We reviewed the Nor-Cal FDC's President, Vice President, and Chairman's Statements of Economic Interest Forms (Form 700) filed with BT&H for 2004 and 2005. Our review determined that the Nor-Cal FDC's Chairman did not disclose his interest in Venture Cal LLC. Although both the Nor-Cal FDC's President and Vice-President disclosed their financial interest in Venture Cal LLC, neither of them disclosed their material business relationship with Venture Cal LLC regarding the Bay Bridge Program. Specifically, Venture Cal LLC operated under a no-bid contract with Nor-Cal LLC for consulting costs and other expenses. Based on our review of invoices and payments, Venture Cal LLC charged Nor-Cal FDC \$26,066 for these services covered under the contract. Because the contract did not receive prior approval from BT&H and Nor-Cal FDC principals failed to adequately disclose their financial interests, we are questioning the entire amount of \$26,066.

**Criteria:**

The State of California Loan Guarantee Program Policy and Procedures Manual, Section IV, states that all FDCs, loan committee members, and Board of Directors' members must avoid conflict of interest in regard to the lending or guarantee activities of the FDC. Those persons involved in the loan guarantee decision-making process are required to disclose their financial interests that may be subject to conflict of interest.

San Francisco/Oakland Bay Bridge State Bond and Line-of-Credit Guarantee Program Contract, Exhibit D, Section 3(C), states that the Contractor is entitled to make use of its own staff and such subcontractors as are mutually acceptable to the Contractor and the state. All agreements between the Contractor and the subcontractor are subject to prior approval of the Contract Manager.

**Recommendations:**

Remit questioned costs of \$26,066 to BT&H for entering into a contract that did not receive BT&H's prior approval and failing to adequately disclose its officers' economic interest in Venture Cal LLC with respect to the Bay Bridge program.

Nor-Cal FDC principals should fully disclose their financial interest in any entity that could cause a possible conflict of interest under the laws administered by the Fair Political Practices Commission. Designated individuals should file an amended Form 700.

Final determination and resolution of the questioned costs is to be made by BT&H.

### **FINDING 3**

#### **Improper Cost Allocation Methodology**

**Condition:**

Nor-Cal FDC's cost allocation plan appears to allocate costs based on availability of funds rather than on a reasonable methodology. Based on timesheets for January 2005 through March 2005, the person who served as both the underwriter and surety bond specialist charged 44 percent of his time to the Bay Bridge Program. However, 60 percent of his time was reimbursed by the Bay Bridge Program.

For January 2005, total rent costs were \$3,025. However, \$2,806 was charged to the SBLGP and Bay Bridge Program even though the Nor-Cal FDC received revenues from other programs, such as the Port of Oakland and the California Economic Development Lending Institute. The rent was then reduced to \$2,381 in March 2005, and further reduced to \$1,431 in May 2005. This reduction appears to be based on the diminishing availability of program funds rather than an allocation of actual costs.

**Criteria:**

Preferred business practices require that if an entity has more than one functional program expense, cost should be reasonably allocated among the programs. Allocating costs in proportion to the amount of income received from each program is a recognized method of cost allocation.

**Recommendation:**

Allocate both indirect and direct costs reasonably among its various programs and document the methodology.

## AGENCY'S RESPONSE

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## ***Response to Findings 1***

## FINDINGS AND RECOMMENDATIONS

### FINDING 1

#### Questioned Claimed Costs

##### Condition:

Some claimed costs did not have adequate documentation, such as timesheets, cancelled checks, or rental agreements. Specifically, the following costs were not supported or calculated correctly:

- Claimed salary costs of the President were not supported by timesheets. Timesheets were not provided for the semi-monthly periods ending January 13, 2005 and February 15, 2005. As a result, the claimed salary costs totaling \$6,096 are questioned. In addition, a support specialist was paid at the rate of \$27 per hour for 39 hours from January through April 2005. Nor-Cal FDC billed BT&H \$3,127 instead of the actual costs of \$1,053 ( $\$27 \times 39$  hours), resulting in questioned costs of \$2,074. In all, questioned salary costs totaled \$8,170 for both programs.
- From January 2005 through May 2005, Nor-Cal FDC charged \$781 per month in rent to the SBLGP, for a total of \$3,905. In addition, Nor-Cal FDC also charged rent in the amount of \$1,600 per month (January 2005 through April 2005), and \$650 in May 2005 to the Bay Bridge Program, for a total of \$7,050. Total rent charged to both programs was \$10,955; however, Nor-Cal FDC was unable to provide supporting documents, such as rental or lease agreements or canceled checks, to substantiate any of these claimed rent costs. Total questioned costs for rent are \$10,955.

##### Criteria:

San Francisco/Oakland Bay Bridge Contract, Exhibit B, Section 3, states that the state agrees to compensate the Nor-Cal FDC for actual expenditures incurred in accordance with the budget line item amounts. Payment for such expenditures by BT&H is contingent upon submission of invoices for claimed expenditures by Nor-Cal FDC that reflects actual expenditures.

##### Recommendation:

Remit \$19,125 in questioned costs to BT&H due to inadequate supporting documentation for claimed costs. Final determination and resolution of the questioned costs is to be made by BT&H.

Nor-Cal FDC Time Sheets

For:

Arnold Bellow

CIRCLE THE DAY OF	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	Total
February 2005	X	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	
Nor-Cal HOURS WORKED	6	6	6	6			6	6	6	6	6			6	6		
CalTran HOURS WORKED	3.5	3.5	3.5	3.5			3.5	3.5	3.5	3.5	3.5			3.5	3.5		
PORT OF OAKLAND HOURS WORKED	1.5	1.5	1.5	1.5			1.5	1.5	1.5	1.5	1.5			1.5	1.5		
VACATION																	
HOLIDAY																	
SICK																	
OTHER																	
BEREAVEMENT JURY DUTY																	
TOTAL HOURS WORKED	11	11	11	11			11	11	11	11	11			11	11		
Pay Period ending: 02/15/05	EMPLOYEE SIGNATURE: <u>Arnold Bellow</u> TODAY'S DATE: 2-15-05																
APPROVED BY:	SUPERVISORS SIGNATURE: _____ TODAY'S DATE: _____																

FOR OFFICE USE ONLY: DATE PAID \_\_\_\_\_ CHECK NUMBER \_\_\_\_\_

# Nor-Cal FDC Time Sheets

For:

AROLD BELLO

CIRCLE THE DAY OF	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	TOTAL HOURS
FEBRUARY 2005	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
Nor-Cal HOURS WORKED	4	4	4			1	4	4	4	4			4			32
CalTrans HOURS WORKED	1	1	1				1	1	1	1			1			8
PORT OF OAKLAND HOURS WORKED	4	4	4				4	4	4	4			4			32
VACATION																
HOLIDAY						8										8
SICK																
OTHER	1	1	1				1	1	1	1			1			8
BEREAVEMENT																
JURY DUTY																
TOTAL HOURS WORKED	10	10	10			8	19	19	19	10			10			88

Pay Period ending:  
02-28-05

EMPLOYEE SIGNATURE: *[Signature]*

TODAY'S DATE: 2-28-05

APPROVED BY:

SUPERVISORS SIGNATURE:

TODAY'S DATE:

FOR OFFICE USE ONLY: DATE PAID

CHECK NUMBER

LOAN COVA: PRESIDENT

CAL TRANS: A) PRESIDENT

B) DIR. CONTRACTOR

C) LOAN UNDERWRITER



Nor-Cal FDC Time Sheets

For:

Arnold Bellow

CIRCLE THE DAY OF	1	2	18	19	20	21	22	8	9	25	26	27	28	29	15	Total
January 1-15-05	16	17														31
Nor-Cal HOURS WORKED			6	6	6	6	6			6	6	6	6	6		
CalTran HOURS WORKED			3.5	3.5	3.5	3.5	3.5			3.5	3.5	3.5	3.5	3.5		
PORT OF OAKLAND HOURS WORKED			1.5	1.5	1.5	1.5	1.5			1.5	1.5	1.5	1.5	1.5		
VACATION																
HOLIDAY																
SICK																
OTHER																
BEREAVEMENT JURY DUTY																
TOTAL HOURS WORKED			11	11	11	11	11			11	11	11	11	11		
Pay Period ending: 01/15/05	EMPLOYEE SIGNATURE: <u>Arnold Bellow</u> TODAY'S DATE: 1-14-05															
APPROVED BY:	SUPERVISORS SIGNATURE: _____ TODAY'S DATE: _____															

FOR OFFICE USE ONLY: DATE PAID \_\_\_\_\_ CHECK NUMBER \_\_\_\_\_

# Nor-Cal FDC Time Sheets

For:

Arnold Bellow, (by Bonnie Sharp)

CIRCLE THE DAY OF	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	TOTAL HOURS
JANUARY 1-31-05	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
Nor-Cal HOURS WORKED			8	8	8	8			8	8	8	6	6	8		60
CalTrans HOURS WORKED			3.5	3.5	3.5	3.5			5.5	3.5	3.5	3.5	3.5			32
PORT OF OAKLAND HOURS WORKED			1.5	1.5	1.5	1.5			1.5	1.5	1.5	1.5	1.5			14
VACATION																
HOLIDAY		8														8
SICK																
OTHER																
BEREAVEMENT																
JURY DUTY																
TOTAL HOURS WORKED		8	11	11	11	11	11	11	11	11	11	11	11	11		106
Pay Period ending: 01/31/05	EMPLOYEE SIGNATURE: <i>Arnold Bellow</i> BY TODAY'S DATE: 1-31-05 <i>Bonnie Sharp</i>															
APPROVED BY:	SUPERVISORS SIGNATURE: _____ TODAY'S DATE: _____															

FOR OFFICE USE ONLY: DATE PAID \_\_\_\_\_ CHECK NUMBER \_\_\_\_\_

Cal - Trans - President

Per Contract Asst Contract

# Communications Technology Cluster, LLC

## RENTAL AGREEMENT

This Rental Agreement is made September 17, 2003 between Sustainable Systems, Inc. / Communications Technology Cluster, LLC (CTC) as Sublessor and Nor-Cal FDC Contractor Assistance Center as Sublessee ("Subtenant") for the rental of real property ("Premises") described as Suite 243 on the second floor of 300 Frank H. Ogawa Plaza, Oakland, California (the "Property").

The Premises are to be used for:

General Business Office Purposes

CTC and Subtenant agree as follows:

1. **RENT:** Subtenant agrees to pay rent for the Premises, the sum of **\$1000.00** per month, payable in advance, on the First day of each month. Subtenant agrees to make payments to:

Communications Technology Cluster, LLC  
300 Frank H. Ogawa Plaza, Suite 210  
Oakland, CA 94612

2. **TERM:** Rental of the Premises shall be on a month-to-month basis and shall commence on October 1, 2003.
3. **SECURITY DEPOSIT:** Subtenant shall deposit with CTC the sum of **\$0.00** as a security deposit.
4. **INTEREST FEES AND LATE CHARGES:** If Subtenant fails to pay when due any rent or other amounts or charges which Subtenant is obligated to pay under the terms of this Agreement or other service agreements in force, the unpaid amounts shall bear interest at the maximum rate then allowed by law. Subtenant acknowledges that the late payment will cause CTC to lose the use of that money and incur costs and expenses not contemplated under this Agreement, including without limitation, administrative and collection costs and processing and accounting expenses, the exact amount of which is extremely difficult to ascertain. Therefore, in addition to interest, if payment for any month is not received by CTC by 5:00 p.m. on the seventh (7<sup>th</sup>) day of the month, Subtenant shall pay a late charge of \$75.00. If the seventh (7<sup>th</sup>) day of the month is on a Saturday, Sunday, or federal, state, city or legal holiday, then such date shall automatically be accelerated to 5:00 p.m. Pacific Time on the prior day which is not a Saturday, Sunday, or federal, state, city or legal holiday. CTC and Subtenant agree that this late charge represents a reasonable estimate of such costs and expenses and is fair compensation to CTC for the loss suffered from such nonpayment by Subtenant. Acceptance of any interest or late charge shall not constitute a waiver of Subtenant's default with respect to such nonpayment by Subtenant nor prevent CTC from exercising any other rights or remedies available to CTC under this Agreement or other service agreements in force.
5. **RENT:** Rent shall include HVAC between the hours of 9:00 a.m. and 6:00 p.m., Monday through Friday, electricity, water, sewage, trash removal, janitorial, pest control, real estate taxes and maintenance of the building. **INCLUDED IN BASE**
6. **LEASE:** This is subject to and subordinate in all respects to the Lease (Exhibit A, attached) Subtenant agrees to be bound by and comply with all applicable provisions of the Lease and Master Sublease. Notwithstanding anything in this Sublease to the contrary, Subtenant agrees that none of the following: CTC, Sustainable Systems Inc., and the City of Oakland shall have any liability of any nature to Subtenant as a consequence of landlord's failure or delay in performing its obligations under the Lease.

# Communications Technology Cluster LLC

## RENTAL AGREEMENT

This Rental Agreement was made July 1, 2001 between Sustainable Systems Inc/Communications Technology Cluster LLC (CTC) as Sublessor and NOR-CAL FDC Sublessee ("Subtenant") for the rental of real property ("Premises") described as Suite 249 or 158 square feet at \$2.75 per month on the second floor of 300 Frank H. Ogawa Plaza, Oakland, California (the "Property").

The Premises are to be used for:

**General Business Office Purposes**

CTC and Subtenant agree as follows:

1. **RENT:** Subtenant agrees to pay rent for the Premises, the sum of **\$425.00** per month, payable in advance, on the First day of each month. Subtenant agrees to make payments to:

Communications Technology Cluster LLC  
300 Frank H. Ogawa Plaza, Suite 210  
Oakland, CA 94612

2. **TERM:** Rental of the Premises is on a month-to-month basis and commenced on July 1, 2001.
3. **SECURITY DEPOSIT:** Subtenant deposited with CTC the sum of **\$500.00** as a non-refundable earnest money for reserving the Premises. If Subtenant does not occupy the Premises on or before July 1, 2001, the fee is NOT refundable. On July 1, 2001 or occupancy starting date, whichever comes first, this fee will be converted to a refundable security deposit. This security deposit is not in lieu of last month rent in the event of termination of this lease for any reason. Subtenant also paid the first month's rent in the amount of **\$500.00** and the last month's rent in the amount of **\$500.00**, totaling **\$1000.00** prior to July 1, 2001, at which time CTC will provide access and keys to the Premises. Subtenant also paid additional deposits in the amount of **\$30.00** for each electronic access key. If subtenant fails to perform any of the terms and conditions of this Agreement, including but not limited to, the punctual payment of rent and maintenance of the Premises in good condition, CTC shall be entitled to apply any or all of the security deposits to the payment of past due rent, replacement of keys, the reasonable cost of repair of any damage to the Premises or the cost of cleaning the Premises upon termination of the Subtenant's occupancy of the Premises. Upon termination of Subtenant's occupancy of the Premises, CTC shall return any of the unused portions of the security deposit (without interest) to the Subtenant.
4. **INTEREST FEES AND LATE CHARGES:** If Subtenant fails to pay when due any rent or other amounts or charges which Subtenant is obligated to pay under the terms of this Agreement or other service agreements in force, the unpaid amounts shall bear interest at the maximum rate then allowed by law. Subtenant acknowledges that the late payment will cause CTC to lose the use of that money and incur costs and expenses not contemplated under this Agreement, including without limitation, administrative and collection costs and processing and accounting expenses, the exact amount of which is extremely difficult to ascertain. Therefore, in addition to interest, if payment for any month is not received by CTC by 5:00 p.m. on the seventh (7<sup>th</sup>) day of the month, Subtenant shall pay a late charge of **\$75.00**. If the seventh (7<sup>th</sup>) day of the month is on a Saturday, Sunday, or federal, state, city or legal holiday, then such date shall automatically be accelerated to 5:00 p.m. Pacific Time on the prior day which is not a Saturday, Sunday, or federal, state, city or legal holiday. CTC and Subtenant agree that this late charge represents a reasonable estimate of such costs and expenses and is fair compensation to CTC for the loss suffered from such nonpayment by Subtenant. Acceptance of any interest or late charge shall not constitute a waiver of Subtenant's

# Communications Technology Cluster LLC

## RENTAL AGREEMENT

This Rental Agreement is made June 26, 2003 between Sustainable Systems Inc/Communications Technology Cluster, LLC (CTC) as Sublessor and NOR-CAL FDC ("Subtenant") for the rental of real property ("Premises") described as Suite 251 (745 square feet) at \$2.75 per square foot per month on the second floor of 300 Frank H. Ogawa Plaza, Oakland, California (the "Property").

The Premises are to be used for:

**General Business Office Purposes**

CTC and Subtenant agree as follows:

1. **RENT:** Subtenant agrees to pay rent for the Premises, the sum of **\$1,600.00** per month, payable in advance, on the First day of each month. Subtenant agrees to make payments to:

Communications Technology Cluster, LLC  
300 Frank H. Ogawa Plaza, Suite 210  
Oakland, CA 94612

2. **TERM:** Rental of the Premises shall be on a month-to-month basis and shall commence on **July 1, 2003**.
3. **SECURITY DEPOSIT:** Subtenant shall deposit with CTC the sum of **\$0.00** as a security deposit. Subtenant shall pay additional deposits in the amount of **\$30.00** for each electronic access key.
4. **INTEREST FEES AND LATE CHARGES:** If Subtenant fails to pay when due any rent or other amounts or charges which Subtenant is obligated to pay under the terms of this Agreement or other service agreements in force, the unpaid amounts shall bear interest at the maximum rate then allowed by law. Subtenant acknowledges that the late payment will cause CTC to lose the use of that money and incur costs and expenses not contemplated under this Agreement, including without limitation, administrative and collection costs and processing and accounting expenses, the exact amount of which is extremely difficult to ascertain. Therefore, in addition to interest, if payment for any month is not received by CTC by 5:00 p.m. on the seventh (7<sup>th</sup>) day of the month, Subtenant shall pay a late charge of **\$75.00**. If the seventh (7<sup>th</sup>) day of the month is on a Saturday, Sunday, or federal, state, city or legal holiday, then such date shall automatically be accelerated to 5:00 p.m. Pacific Time on the prior day which is not a Saturday, Sunday, or federal, state, city or legal holiday. CTC and Subtenant agree that this late charge represents a reasonable estimate of such costs and expenses and is fair compensation to CTC for the loss suffered from such nonpayment by Subtenant. Acceptance of any interest or late charge shall not constitute a waiver of Subtenant's default with respect to such nonpayment by Subtenant nor prevent CTC from exercising any other rights or remedies available to CTC under this Agreement or other service agreements in force.
5. **RENT:** Rent shall include HVAC between the hours of 9:00 a.m. and 6:00 p.m., Monday through Friday, electricity, water, sewage, trash removal, janitorial, pest control, real estate taxes and maintenance of the building. **INCLUDED IN BASE**
6. **LEASE:** This is subject to and subordinate in all respects to the Lease (Exhibit A, attached) Subtenant agrees to be bound by and comply with all applicable provisions of the Lease and Master Sublease. Notwithstanding anything in this Sublease to the contrary, Subtenant agrees that none of

## ***Response to Findings 2***

## FINDINGS AND RECOMMENDATIONS

### FINDING 1

#### Questioned Claimed Costs

##### Condition:

Some claimed costs did not have adequate documentation, such as timesheets, cancelled checks, or rental agreements. Specifically, the following costs were not supported or calculated correctly:

- Claimed salary costs of the President were not supported by timesheets. Timesheets were not provided for the semi-monthly periods ending January 13, 2005 and February 15, 2005. As a result, the claimed salary costs totaling \$6,096 are questioned. In addition, a support specialist was paid at the rate of \$27 per hour for 39 hours from January through April 2005. Nor-Cal FDC billed BT&H \$3,127 instead of the actual costs of \$1,053 (\$27 X 39 hours), resulting in questioned costs of \$2,074. In all, questioned salary costs totaled \$8,170 for both programs.
- From January 2005 through May 2005, Nor-Cal FDC charged \$781 per month in rent to the SBLGP, for a total of \$3,905. In addition, Nor-Cal FDC also charged rent in the amount of \$1,600 per month (January 2005 through April 2005), and \$650 in May 2005 to the Bay Bridge Program, for a total of \$7,050. Total rent charged to both programs was \$10,955; however, Nor-Cal FDC was unable to provide supporting documents, such as rental or lease agreements or canceled checks, to substantiate any of these claimed rent costs. Total questioned costs for rent are \$10,955.

##### Criteria:

San Francisco/Oakland Bay Bridge Contract, Exhibit B, Section 3, states that the state agrees to compensate the Nor-Cal FDC for actual expenditures incurred in accordance with the budget line item amounts. Payment for such expenditures by BT&H is contingent upon submission of invoices for claimed expenditures by Nor-Cal FDC that reflects actual expenditures.

##### Recommendation:

Remit \$19,125 in questioned costs to BT&H due to inadequate supporting documentation for claimed costs. Final determination and resolution of the questioned costs is to be made by BT&H.

### FINDING 2

#### Improper Contracting Practices

##### Condition:

For the Bay Bridge program, Nor-Cal FDC awarded a contract to Venture Cal LLC, a for-profit corporation; however, this contract was not pre-approved by BT&H. In addition, the following was noted:

- The Chairman of Nor-Cal FDC's Board of Directors is a Principal Officer and Founder of Venture Cal LLC.
- The Nor-Cal FDC's President is the Managing Director, a Principal Officer, and Founder of Venture Cal LLC.
- The Nor-Cal FDC's Vice-President is also its underwriter and surety bond specialist. The Vice-President also performed outside consulting work under Venture Cal LLC's Bay Bridge contract with Nor-Cal FDC.

We reviewed the Nor-Cal FDC's President, Vice President, and Chairman's Statements of Economic Interest Forms (Form 700) filed with BT&H for 2004 and 2005. Our review determined that the Nor-Cal FDC's Chairman did not disclose his interest in Venture Cal LLC. Although both the Nor-Cal FDC's President and Vice-President disclosed their financial interest in Venture Cal LLC, neither of them disclosed their material business relationship with Venture Cal LLC regarding the Bay Bridge Program. Specifically, Venture Cal LLC operated under a no-bid contract with Nor-Cal LLC for consulting costs and other expenses. Based on our review of invoices and payments, Venture Cal LLC charged Nor-Cal FDC \$26,066 for these services covered under the contract. Because the contract did not receive prior approval from BT&H and Nor-Cal FDC principals failed to adequately disclose their financial interests, we are questioning the entire amount of \$26,066.

**Criteria:**

The State of California Loan Guarantee Program Policy and Procedures Manual, Section IV, states that all FDCs, loan committee members, and Board of Directors' members must avoid conflict of interest in regard to the lending or guarantee activities of the FDC. Those persons involved in the loan guarantee decision-making process are required to disclose their financial interests that may be subject to conflict of interest.

San Francisco/Oakland Bay Bridge State Bond and Line-of-Credit Guarantee Program Contract, Exhibit D, Section 3(C), states that the Contractor is entitled to make use of its own staff and such subcontractors as are mutually acceptable to the Contractor and the state. All agreements between the Contractor and the subcontractor are subject to prior approval of the Contract Manager.

**Recommendations:**

Remit questioned costs of \$26,066 to BT&H for entering into a contract that did not receive BT&H's prior approval and failing to adequately disclose its officers' economic interest in Venture Cal LLC with respect to the Bay Bridge program.

Nor-Cal FDC principals should fully disclose their financial interest in any entity that could cause a possible conflict of interest under the laws administered by the Fair Political Practices Commission. Designated individuals should file an amended Form 700.

Final determination and resolution of the questioned costs is to be made by BT&H.



Response to State Department of Finance Audit Findings Regarding VentureCal LLC  
sub-contract work performed on CalTrans Bay Bridge Contract.

In calendar year 1999, the Board of Directors of Nor-Cal FDC and management staff held a two-day retreat in Aptos, California for the specific purpose of moving Nor-Cal FDC closer towards the goal of partial self-sufficiency. In this connection, the Board of Directors of Nor-Cal FDC directed staff to sponsor a separate for-profit entity to help move Nor-Cal FDC in this direction. It was not until the year 2001 that the legal structure for the for-profit entity known as VentureCal LLC was established consistent with the discussions and subsequent board direction that took place at the 1999 retreat.

The law firm of Bay Venture Counsel LLP was given the charge of coming up with the appropriate structure to create a for-profit economic development company that could work with a wide range of financial institutions to help Nor-Cal FDC fund loan transactions and other programs without regard to the limitations of the State Loan Guaranty Program. In this regard, the first approach was to help Nor-Cal FDC obtain status as a "Certified Development Entity" through the Federal Treasury in preparation for the submittal of a formal application to obtain tax credits under the Federal Treasury "New Markets Tax Credit" program.

The Nor-Cal FDC Board of Directors authorized the Chairperson and President of Nor-Cal FDC to go forward in 2002 with the formal organizational framework for VentureCal LLC to operate. In order to eliminate any corporate liability to Nor-Cal FDC the Board of Nor-Cal FDC approved having the Chairperson and President of Nor-Cal FDC act in the capacity of <sup>Principal</sup> partners in the VentureCal LLC management with the President of Nor-Cal FDC acting in the capacity of managing director. Both the Chairperson and President of Nor-Cal FDC abstained from any voting in these matters. Since Nor-Cal FDC had the resources and VentureCal LLC did not, the Board voted to provide an interim working capital loan that needed repayment once the new entity was financial solvent. During this period of initial operations, the limited liability factor of VentureCal LLC rested with Mr. Randall Martinez and Mr. Arnold Bellow who were then and are now jointly and severally liable (albeit limited to company liability) for repayment of any loans or credit extended. The first real work task of VentureCal LLC was to establish a partnership with the investment banking firm of Bear-Stearns to pursue the financing opportunities with the Federal Treasury that required a separate entity for administration of this highly specialized financing program to benefit lending activities in low and moderate income census tracts in Northern California.

As the period for submitting the first round of the "New Markets Tax Credit" program drew near, VentureCal LLC recruited Mr. George McDaniel (a former bank president) to help put the application together for consideration under the very involved award process used by the Federal Treasury. This highly competitive program is a national competition among CDFI's and CDE's who possess the requisite experience and management to administer these dollar-for-dollar federal tax credits to financial institutions and institutional investors who needed such credits to offset their corporate taxable income.

Unfortunately, Nor-Cal FDC was not a recipient of the two rounds of tax credits that were subsequently awarded for more established groups in other parts of the country.

Given that experience, the Chairperson and President recommended to the Board of Nor-Cal FDC that VentureCal LLC embark on an aggressive campaign of finding suitable corporate and new lending partners to help Nor-Cal FDC achieve greater grant and business opportunities in the coming years. Some of those early efforts on now beginning to pay off in a substantial way for the enhancement of new loan products that VentureCal LLC were facilitated and brokered by the President and Vice President of Nor-Cal FDC over a two plus year period of time. Those new loan products and grants arranged by VentureCal LLC for Nor-Cal FDC include a memorandum of understanding with Lenders For Community Development to assist the smallest of small business enterprises with up to 80 loans per year of clients that would otherwise not be serviced by the State Loan Guarantee Program. The new loan products and assistance has also included the CEDLI Loan-to-Lenders Program managed by Nor-Cal FDC with VentureCal LLC arranging grants from Comerica Bank and HMS Host in the amount of \$150,000 to be used as a loan-loss reserve as required by this statewide bank consortium to make loans to non-bankable small business enterprises. Several of these recipients have graduated to the State Loan Guarantee Program after establishing a track record under the CEDLI Loan-to-Lenders program as arranged by VentureCal LLC.

In addition to the above, VentureCal LLC helped Nor-Cal FDC participate in the CEDLI Co-Lending Program thus enabling Nor-Cal FDC to access another range of capital products for small businesses that needed larger loan amounts to finance expansion. VentureCal LLC also helped Nor-Cal FDC obtain a contract with the Port of Oakland to help economically disadvantaged contractors and vendors obtain contracts with the needed financing help of the CEDLI Loan-to-Lenders Program. Finally, VentureCal LLC convinced a community bank to actively participate in the State of California RUST Program along with specialized loan financing for gas stations needing working capital loans.

All of this activity was done to push Nor-Cal FDC toward a greater degree of self-sufficiency as encouraged by the then State Trade & Commerce Agency. The Chairperson of Nor-Cal FDC did not receive any compensation for his efforts in this regard and the President of Nor-Cal FDC had his compensation allocated by time on non-state loan guarantee program administration activities.

Finding 2:

Condition

Nor-Cal's FDC's Vice-President is also its underwriter and surety bond specialists. The Vice president also performs outside consulting work under Venture Cal's LLC's Bay Bridge contract with Nor-Cal FDC.

Response

1) As Vice-President of Nor-Cal, my staff duties were clear in regards to underwriting and surety bond specialists. However, the Cal Trans Bay Bridge project required more than just underwriting and the placement of the surety bond. The other services that were required were the business development of finding the eligible Cal Trans DBE's and then providing the technical assistance so that the DBE's could present a surety package which included: Business plan development, financial and cash flow analysis, credit readiness and general counseling.

These above mentioned services are not included in Nor-Cal's general scope of services and generally contracted out. I was one of the contractor's for Venture Cal to provide those services. The services were billed on an hourly basis and directly linked to the DBE.

## ***Response to Findings 3***

### FINDING 3

#### Improper Cost Allocation Methodology

Condition:

Nor-Cal FDC's cost allocation plan appears to allocate costs based on availability of funds rather than on a reasonable methodology. Based on timesheets for January 2005 through March 2005, the person who served as both the underwriter and surety bond specialist charged 44 percent of his time to the Bay Bridge Program. However, 60 percent of his time was reimbursed by the Bay Bridge Program.

For January 2005, total rent costs were \$3,025. However, \$2,806 was charged to the SBLGP and Bay Bridge Program even though the Nor-Cal FDC received revenues from other programs, such as the Port of Oakland and the California Economic Development Lending Institute. The rent was then reduced to \$2,381 in March 2005, and further reduced to \$1,431 in May 2005. This reduction appears to be based on the diminishing availability of program funds rather than an allocation of actual costs.

Criteria:

Preferred business practices require that if an entity has more than one functional program expense, cost should be reasonably allocated among the programs. Allocating costs in proportion to the amount of income received from each program is a recognized method of cost allocation.

Recommendation:

Allocate both indirect and direct costs reasonably among its various programs and document the methodology.

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### Response to Findings 3

#### Verification of Allowable Costs/Cost Allocation

Nor-Cal FDC was unaware that this particular entity required prior written approval from CalTrans or the former Trade & Commerce Agency for subcontracted work although we did disclose our intent to utilize this separate entity to the former Manager of the Bay Bridge Project in July 2003. In fact, Mr. George McDaniel was introduced as the key point of contact for this subcontracted work through VentureCal LLC. This entity was used in place of another private sector firm that Nor-Cal FDC intended to use but was unable to negotiate an acceptable sub-contract since the compensation required by that particular firm was nearly the entire amount of the annual contract.

The Chairperson and the President of Nor-Cal FDC agreed to manage the affairs of VentureCal LLC. The Chairperson receives no compensation for his efforts on behalf of Nor-Cal FDC or VentureCal LLC. The President of Nor-Cal FDC receives compensation from both Nor-Cal FDC and VentureCal LLC that is apportioned at roughly 75% (40 hrs to the State Loan Guaranty Program and 12 to 13 hrs per week to non-state loan guaranty functions) as part of his overall annual compensation from Nor-Cal FDC.

In short, VentureCal LLC was created to help Nor-Cal FDC expand the overall resource base of Nor-Cal FDC in order to facilitate more financing opportunities and contract funding opportunities ostensibly to help more small businesses than could be helped with just the State Loan Guarantee Program alone.

## EVALUATION OF RESPONSE

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We received Nor-Cal FDC's response to our draft report on Agreed-Upon Procedures for the period July 1, 2004 through June 30, 2005. The response is incorporated in this report, and our evaluation is as follows:

### **FINDING 1    Questioned Claimed Costs**

- A.    Regarding claimed salary costs of \$6,096 paid to Nor-Cal FDC's President, we received copies of the President's timesheets for the period in question. These timesheets were not signed by a payroll supervisor or by the accountant who recorded costs against the contract. Therefore, the finding remains a questioned cost.
- B.    Nor-Cal FDC did not provide documentary support for hours claimed by the support specialist under the contract. These claimed costs total \$3,127, and not the \$1,053 actually paid to the specialist. Therefore \$2,074 remains a questioned cost.
- C.    Nor-Cal FDC provided an unsigned copy of a rental agreement to support rent costs of \$10,955 charged against the contract. Therefore, the finding remains a questioned cost.

### **FINDING 2    Improper Contracting Practices**

In its response, Nor-Cal FDC did not adequately address the issue raised, which was that Nor-Cal FDC had entered into a subcontract with Venture Cal LLC without obtaining prior written approval from BT&H. Nor-Cal FDC claims that it was unaware of the duty to obtain prior written approval, even though this requirement was stated in the contract.

Nor-Cal FDC further claims that in July 2003 Nor-Cal FDC disclosed its "intent to utilize this separate entity" (Venture Cal LLC) to the former manager of the Bay Bridge project. However, Nor-Cal FDC did not provide evidence of the circumstances of this disclosure. Furthermore, since disclosure to the Bay Bridge manager would not satisfy the requirement of prior written approval by BT&H in the first place, the \$26,066 Nor-Cal FDC paid to Venture Cal LLC under their subcontract remains a questioned cost.

### **FINDING 3    Improper Cost Allocation Methodology**

The Nor-Cal response did not address its cost allocation methodology. The cost allocation method followed did not identify how rent was allocated between the SBLGP, Bay Bridge, Port of Oakland, and other programs. Allocation of rent and other costs was based on funds availability and not proportionally based on the workload incurred under each of Nor-Cal FDC's programs.